

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JAY CUNNINGHAM, Personal Representative
of the Estate of Michael Galindo, Deceased;

Plaintiff,

vs.

BRAD HANSEN, in his official and individual
capacities; SCOTT FRAKES, in his official
and individual capacities; STATE OF
NEBRASKA, and DOES 1 - 10, in their
official and individual capacities;

Defendants.

4:18CV3012

**ORDER SETTING
SCHEDULE FOR
PROGRESSION OF CASE**

A Telephone Conference was held in this matter on September 21, 2018, with counsel for the parties. In accordance with the matters discussed at the Conference, and after review of the Rule 26(f) Report (Filing No. 25),

IT IS ORDERED:

1. **Authorization and Sequence of Discovery.** The parties may now commence discovery. That discovery required to prepare the case for **mediation** or other settlement negotiations and that discovery required to prepare the case for possible summary judgment disposition shall be conducted before other discovery.

2. **Mandatory Disclosures** described in Fed. R. Civ. P. 26(a)(1) shall be served by **November 1, 2018**.

3. The **filing of disclosures** under Fed. R. Civ. P. 26(a)(1), and (2), as well as the filing of discovery documents, depositions, and disclosures required by this order shall be governed by NECivR [26.1](#). The disclosures required by Fed. R. Civ. P. 26(a)(3) shall be filed when served. **Note: Disclosures that are filed should be redacted so no personal information (e.g., home addresses, phone numbers, Social Security numbers, etc.) is made part of the public record.**

4. **Withholding Documents from Disclosure or Discovery.** If any document is withheld from production or disclosure on the grounds of privilege or work product, the producing party shall disclose the following information about each such document withheld: a description of the document withheld with as much specificity as is practicable without disclosing its contents, including (a) the general nature of the document; (b) the identity and position of its author; (c) the date it was written; (d) the identity and position of its addressee; (e) the identities and positions of all persons who were given or have received copies of it and the dates copies were received by them; (f) the document's present location and the identity and position of its custodian; and (g) the specific reason or reasons why it has been withheld from production or disclosure.

5. **Limits on Discovery.** Each party is limited to serving **twenty-five (25)** interrogatories on any other party. The plaintiffs as a group, and the defendants as a group, are each limited to taking **ten (10)** depositions in this case, without leave of court.

6. **Adding Parties; Amending Pleadings.** Any motion to amend pleadings and/or add parties shall be filed by the Plaintiff not later than February 15, 2019, and by the Defendants not later than March 15, 2019.

7. **Motions to Dismiss or Motions for Summary Judgment *based on qualified immunity*** shall be filed not later than **April 1, 2019**. See NECivR [56.1](#) and NECivR [7.1](#). Within fourteen days after the Court rules on such motion, the parties shall contact the chambers of the undersigned magistrate judge to schedule a telephone conference.

8. **Discovery Deadlines:**

- a. **Deposition Deadline.** All depositions, whether or not they are intended to be used at trial, shall be completed by **July 1, 2019**.
- b. **Written Discovery Deadline.** All interrogatories, requests for admission and requests for production or inspection, whether or not they are intended to be used at trial, shall be completed by **July 1, 2019**. Counsel may stipulate to extensions of time to respond to discovery requests in accordance with Fed. R. Civ. P. 29, but such extensions shall not extend any of the dates in this order; **any request to extend the deadlines of this order shall be sought by motion**.
- c. **Discovery Motions.** Discovery motions shall be filed not later than **June 30, 2019**, as to matters which are then ripe for decision; discovery matters arising after that date may be the subject of motions until the deposition deadline. Counsel are reminded of the provisions of NECivR [7.1\(i\)](#). Motions to compel shall not be filed without first contacting the chambers of the undersigned magistrate judge to set a conference to discuss the parties' dispute.

9. **Disclosure of Expert Witnesses.**¹ Each plaintiff, counter-claimant, and cross-claimant shall identify expert witnesses and shall serve expert reports by **March 4, 2019**. Each defendant, counter-defendant, and cross-defendant shall identify expert witnesses and shall serve expert reports by **May 3, 2019**. If necessary to refute the disclosed opinions of an expert witness of an opponent, a plaintiff, counter-claimant, or cross-claimant may disclose additional expert witnesses not later than **May 20, 2019**, provided that the disclosing party then provides all of the information described in Fed. R. Civ. P. 26(a)(2) and makes the expert witness available for deposition prior to the date set for completion of depositions. Supplementation of these disclosures, if originally made prior to these deadlines, shall be made on these deadlines as to any information for which supplementation is addressed in Fed. R. Civ. P. 26(e). The testimony of the expert at trial shall be limited to the information disclosed in accordance with this paragraph.

10. **Motions in limine** challenging the admissibility of expert testimony at trial under Fed. R. Evid. 702, *see Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999), and *Daubert v. Merrell-Dow Pharmaceuticals*, 509 U.S. 579 (1993), shall be filed by **July 1, 2019**, and accompanied by a request for a hearing if necessary. Failure to timely move for a hearing may constitute waiver of the request for a hearing.

11. **Motions to alter dates.** All requests for changes of deadlines established by this order shall be directed to the magistrate judge by appropriate motion.

Dated this 21st day of September, 2018.

BY THE COURT:

s/ Michael D. Nelson
United States Magistrate Judge

¹ A treating physician must be identified pursuant to Fed. R. Civ. P. 26(a)(2)(A), but a treating physician is not deemed to be "retained or specially employed to provide expert testimony in the case" so as to require a written report under Fed. R. Civ. P. 26(a)(2)(B).